(6)

No. 01-488

IN THE

Supreme Court of the United States

TIMOTHY STUART RING,

Petitioner,

v.

STATE OF ARIZONA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED SEPTEMBER 18, 2001
CERTIORARI GRANTED JANUARY 11, 2002

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APPENDIX A — RELEVANT DOCKET ENTRIES OF THE SUPERIOR COURT OF ARIZONA IN MARICOPA COUNTY

CASE DOCKET FOR CASE CR95-01754 -001
AS OF 02/13/2002

* * *

PARTIES

Party No.	Party Name	Relationship	Sex
001	STATE OF ARIZONA ATTORNEY 006432 DAVID A/POWELL	PLA	N
002	GRAND JURY ATTORNEY PROPER	IMO	N
003	TIMOTHY STUART RING (A) ATTORNEY 007380 ROBERT W/DOYLE AKA — TIMOTHY S RING	DEF	M
004	JAMES HAROLD GREENHAM (B) AKA — JAMES H GREENHAM	DEF	M

Appendix A

005 WILLIAM ELWOOD FERGUSON II (C) DEF M
ATTORNEY 010617 WILLIAM/FOREMAN
AKA — WILLIAM E FERGUSON II
AKA — WILLIAM FERGUSON II
AKA — WILLIAM FERGUSON

* * *

File Date	Event Description Supplementary Description	Associated Parties
02/24/1995	INDICTMENT CT 1: MURDER 1ST DEG CL 1 DANGEROUS FEL CT 2: CONSPIRACY TO COMMIT MURDER 1ST DEG CL 1 DANGEROUS FEL OR IN ALTERNATIVE CONSPIRACY TO COMMIT ARMED ROBBERY CL 2 DANGEROUS FEL OR IN ALTERNATIVE CONSPIRACY TO COMMIT BURGLARY 1ST DEG CL 3 DANGEROUS FEL CT 3: ARMED ROBBERY CL 2 DANGEROUS FEL	9680 P1 (A-C)
02/24/1995	INDICTMENT CT 4: BURGLARY 1ST DEG CL 3 DANGEROUS FEL CT 5: THEFT CL 2 FEL DOC: ON OR ABOUT 11/28/94 DR 94-104851 GLENDALE PD	9680 P1 (A-C)
02/24/1995	ME: GJ NOT/SUPVENING INDICT	C (A-C)

* * *

Appendix A

02/27/1995	NOTICE OF SUPERVENING INDICTMT NO BOND/NI	9680 P1 (A)

* * *

03/28/1995	NOTICE OF INTENTION TO SEEK THE DEATH PENALTY	9680 P1 (A)

* * *

12/06/1996	JURY INSTRUCTIONS	C (A)

* * *

12/10/1996	NOTICE STATE'S RULE 15.1(G)/OF AGG FACTORS & WITS	9680 P1 (A)

* * *

10/29/1997	ME: SENTENCE IMPRISONMENT	C (A)

* * *

APPENDIX B — RELEVANT DOCKET ENTRIES OF THE ARIZONA SUPREME COURT

Criminal Docket
Arizona Supreme Court

CASE NUMBER
CR-97-0428-AP

COURT NUMBER

RELATED CASE :
CofA NO. :
CofA TYPE :
LOWER COURT : Maricopa
LOWER CT NO. : CR-95-01754(A)
JUDGE : Gregory H. Martin
SENTENCE : Death

PARTY 1 DATA

NAME : **STATE OF ARIZONA**
Total : 1
TYPE : Appellee

PARTY 2 DATA

NAME : **TIMOTHY STUART RING**
Total : 1
TYPE : Appellant

Appendix B

Disposition	Citation
Affirmed	25 P.3d 1139 (Ariz. 2001); 200 Ariz 267

STAY REQUEST:	STAY ACTION:
FILED: 31-Oct-1997	RECORD COMPLETE: 22-Jun-1999
OPEN BRIEF/PETITION: 19-Jan-2000	SUP OB/X APP/X PET:
ANSWER/RESP: 19-Apr-2000	SUP ANSWER/RESP:
REPLY: 15-Jun-2000	SUP REPLY:
AT ISSUE: 15-Jun-2000	SUBMITTED ON BRIEFS:
OA Granted/Denied: 16-Jun-2000 G	
ORAL ARGUMENT: 7-Dec-2000 25	SUBMITTED: 7-Dec-2000
DECISION DATE: 20-Jun-2001	DECISION TYPE: OPINION
DECISION SUP:	DECISION SUP TYPE:
M/RECON:	RESP M/RECON:
MANDATE:	WARRANT:
CERT. PETITION: 18-Sep-2001	CERT. DECISION:
AGENDA:	
OB NOTICE REQ:	OB NOTICE SENT:
OA NOTICE REQ:	OA NOTICE SENT: S
PENDING: N	TERMINATION DATE: 10-Jul-2001

Appendix B

TICKLE DATE:

TICKLER:

COMMENTS:

CASE PROCEEDINGS

Item	Date/Init	Description
1	10/31/97 rs	Notice of Appeal [Appellant Ring] [Judgment filed on 10/29/97] [T 12/22/97]
2	10/31/97 rs	Notice of Appeal [Clerk, MCSC] [Judgment filed 10/30/97]
		* * *
28	1/19/00 cez	APPELLANT'S OPENING BRIEF [Appellant Ring]
		* * *
32	4/19/00 cez	APPELLEE'S ANSWERING BRIEF
		* * *
36	6/15/00 cez	APPELLANT'S REPLY BRIEF [Ring]
		* * *
43	12/07/00 ls	Oral Argument — Submitted for decision en banc [Attorneys who argued: Jon G. Anderson, Esq.; Robert W. Doyle, Esq.]

Appendix B

44	6/20/01 sls	OPINION — We affirm Defendant's convictions and sentences.
		* * *
45	9/25/01 dm	USSC Notice — Petition for Writ of Certiorari filed 9/18/01 [USSC No. 01-488]
46	1/22/02 dm	Letter from USSC: Petition for Writ of Certiorari granted 1/11/02. [USSC #01-488] [Suter, Clerk]
		* * *

APPENDIX C — INDICTMENT DATED FEBRUARY 24, 1995

DR. 94-104851 Glendale P.D.

IN THE SUPERIOR COURT OF
THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

NO. CR95-01754

177 GJ 304

STATE OF ARIZONA,

Plaintiff,

vs.

TIMOTHY STUART RING	(A)
JAMES HAROLD GREENHAM	(B)
WILLIAM ELWOOD FERGUSON II	(C)

Defendants.

INDICTMENT

COUNT 1: MURDER FIRST DEGREE, A CLASS 1 DANGEROUS FELONY
COUNT 2: CONSPIRACY TO COMMIT MURDER FIRST DEGREE, A CLASS 1 DANGEROUS FELONY OR IN THE ALTERNATIVE CONSPIRACY TO COMMIT ARMED ROBBERY, A CLASS 2 DANGEROUS FELONY OR IN THE ALTERNATIVE CONSPIRACY TO COMMIT BURGLARY FIRST DEGREE, A CLASS 3 DANGEROUS FELONY

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COUNT 3: ARMED ROBBERY, A CLASS 2 DANGEROUS FELONY
COUNT 4: BURGLARY FIRST DEGREE, A CLASS 3 DANGEROUS FELONY
COUNT 5: THEFT, A CLASS 2 FELONY

The Grand Jurors of Maricopa County, Arizona, accuse TIMOTHY STUART RING, JAMES HAROLD GREENHAM and WILLIAM ELWOOD FERGUSON II, on this 24th day of February, 1995, charging that in Maricopa County, Arizona:

COUNT 1:

TIMOTHY STUART RING, JAMES HAROLD GREENHAM and WILLIAM ELWOOD FERGUSON II, on or about the 28th day of November, 1994, knowing that their conduct would cause death, with premeditation caused the death of John Magoch and/or acting either alone or with one or more other persons, committed or attempted to commit Armed Robbery and/or Burglary First Degree and in the course of and in furtherance of such offense, or immediate flight from such offense, TIMOTHY STUART RING, JAMES HAROLD GREENHAM and WILLIAM ELWOOD FERGUSON II or another person caused the death of John Magoch, in violation of A.R.S. §§ 13-1101, 13-1105, 13-301, 13-302, 13-303, 13-304, 13-703, 13-801 and 13-812.

The State of Arizona further alleges that the offense charged in this count is a dangerous felony because the offense involved the discharge, use, or threatening exhibition of a gun, a deadly weapon or dangerous instrument, in violation of A.R.S. § 13-604(P).

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COUNT 2:

TIMOTHY STUART RING, JAMES HAROLD GREENHAM and WILLIAM ELWOOD FERGUSON II, on or before the 28th day of November, 1994, with the intent to promote or aid the commission of an offense, to-wit: Murder First Degree, agreed with one or more persons, that at least one of them or another would engage in conduct constituting the offense of Murder First Degree in violation of A.R.S. 13-1101, in violation of A.R.S. §§ 13-1003, 13-1101, 13-1105, 13-301, 13-302, 13-303, 13-304, 13-701, 13-801 and 13-812.

OR IN THE ALTERNATIVE: TIMOTHY STUART RING, JAMES HAROLD GREENHAM and WILLIAM ELWOOD FERGUSON II, on or before the 28th day of November, 1994, with the intent to promote or aid the commission of an offense, to-wit: Armed Robbery, agreed with one or more persons, that at least one of them or another would engage in conduct constituting the offense of Armed Robbery in violation of A.R.S. 13-1904, in violation of A.R.S. §§ 13-1003, 13-1904, 13-1901, 13-1902, 13-301, 13-302, 13-303, 13-304, 13-701, 13-702, 13-801 and 13-812.

OR IN THE ALTERNATIVE: TIMOTHY STUART RING, JAMES HAROLD GREENHAM and WILLIAM ELWOOD FERGUSON II, on or before the 28th day of November, 1994, with the intent to promote or aid the commission of an offense, to-wit: Burglary First Degree, agreed with one or more persons, that at least one of them or another would engage in conduct constituting the offense of Burglary First Degree in violation of A.R.S. 13-1508, in violation of A.R.S. §§ 13-1003, 13-13-1508, 13-1506,

Appendix C

13-1501, 13-301, 13-302, 13-303, 13-304, 13-701, 13-702, 13-801 and 13-812.

The State of Arizona further alleges that the offense charged in this count is a dangerous felony because the offense involved the discharge, use, or threatening exhibition of a gun, a deadly weapon or dangerous instrument, in violation of A.R.S. § 13-604(P).

COUNT 3:

TIMOTHY STUART RING, JAMES HAROLD GREENHAM and WILLIAM ELWOOD FERGUSON II, on or about the 28th day of November, 1994, in the course of taking property of another from John Magoch's person or immediate presence and against his will, used threats or force against John Magoch, with the intent to coerce surrender of the property or to prevent resistance to TIMOTHY STUART RING, JAMES HAROLD GREENHAM and WILLIAM ELWOOD FERGUSON II'S taking or retaining the property while TIMOTHY STUART RING, JAMES HAROLD GREENHAM and/or WILLIAM ELWOOD FERGUSON II or an accomplice was armed with a deadly weapon or a simulated deadly weapon or used or threatened to use a deadly weapon or dangerous instrument or a simulated deadly weapon, to-wit: a gun, in violation of A.R.S. §§ 13-1904, 13-1901, 13-1902, 13-301, 13-302, 13-303, 13-304, 13-701, 13-702, 13-801, and 13-812.

The State of Arizona further alleges that the offense charged in this count is a dangerous felony because the offense involved the discharge, use, or threatening exhibition

of a gun, a deadly weapon or dangerous instrument, in violation of A.R.S. § 13-604(P).

COUNT 4:

TIMOTHY STUART RING, JAMES HAROLD GREENHAM and WILLIAM ELWOOD FERGUSON II, on or about the 28th day of November, 1994, with the intent to commit a theft or a felony therein, entered or remained unlawfully in or on a non-residential structure of Wells Fargo Armored Carrier's van making a pickup or delivery at the Arrowhead Mall, Glendale, Maricopa County, Arizona, while he or his accomplice knowingly possessed an explosive, a deadly weapon, or a dangerous instrument, to-wit: a gun, in violation of A.R.S. §§ 13-1501, 13-1508, 13-1506, 13-301, 13-302, 13-303, 13-304, 13-701, 13-702, 13-801, and 13-812.

The State of Arizona further alleges that the offense charged in this count is a dangerous felony because the offense involved the discharge, use, or threatening exhibition of a gun, a deadly weapon or dangerous instrument, in violation of A.R.S. § 13-604(P).

COUNT 5:

TIMOTHY STUART RING, JAMES HAROLD GREENHAM and WILLIAM ELWOOD FERGUSON II, on or about the 28th day of November, 1994, without lawful authority, knowingly, controlled Wells Fargo Armored Carrier's cash, of a value of $100,000 or more, with the intent to deprive Wells Fargo Armored Carrier of such property, in violation of A.R.S. §§ 13-1801, 13-1802, 13-301, 13-302, 13-303, 13-304, 13-701, 13-702, 13-801 and 13-812.

A True Bill
("A True Bill")

Date: February 24, 1995

s/ Janet Lee Kistler
JANET LEE KISTLER
FOREMAN OF THE GRAND JURY

RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY

s/ Alfred M. Fenzel
ALFRED M. FENZEL
DEPUTY COUNTY ATTORNEY

APPENDIX D — NOTICE OF SUPERVENING INDICTMENT DATED FEBRUARY 28, 1995

IN THE SUPERIOR COURT OF
THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

NO. CR95-01754

177 GJ 304

THE STATE OF ARIZONA,

Plaintiff,

vs.

TIMOTHY STUART RING (A),

Defendant.

NOTICE OF SUPERVENING INDICTMENT

NO BOND/NI

An indictment having been filed this 24th day of February, 1995, in the Superior Court of Maricopa County, Arizona, charging you, TIMOTHY STUART RING, with the crimes of:

COUNT 1: MURDER FIRST DEGREE, A CLASS 1 DANGEROUS FELONY and **COUNT 3:** ARMED ROBBERY, A CLASS 2 DANGEROUS FELONY, and having been denied admission to bail on these charges in Direct Complaint No. CR95-01507 in the Superior Court, Maricopa County, Arizona,

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COUNT 2: CONSPIRACY TO COMMIT MURDER FIRST DEGREE, A CLASS 1 DANGEROUS FELONY **OR IN THE ALTERNATIVE** CONSPIRACY TO COMMIT ARMED ROBBERY, A CLASS 2 DANGEROUS FELONY **OR IN THE ALTERNATIVE** CONSPIRACY TO COMMIT BURGLARY FIRST DEGREE, A CLASS 3 DANGEROUS FELONY; **COUNT 4:** BURGLARY FIRST DEGREE, A CLASS 3 DANGEROUS FELONY and **COUNT 5:** THEFT, A CLASS 3 FELONY, and not having been initialed and no Complaint having been filed in the Glendale Justice Court Precinct, Maricopa County, Arizona, you are

HEREBY NOTIFIED to appear before this court to answer the Indictment in Room 501, Central Courts Building, 201 West Jefferson, Superior Court, at Phoenix, Arizona, on Monday, March 6, 1995, at the hour of 8:30 a.m.

FAILURE TO APPEAR WITHOUT GOOD CAUSE WILL PLACE YOU IN CONTEMPT OF COURT, AND A WARRANT WILL BE ISSUED FOR YOUR ARREST.

GIVEN UNDER MY HAND AND SEAL of the said Court this 24th day of February, 1995, by order of the Court.

CLERK OF THE SUPERIOR COURT

By s/ Brenda S. Burton
Deputy Clerk

Appendix D

Copy of the foregoing
mailed this __ day
of February, 1995, to:

__ TIMOTHY STUART RING, Defendant
(In Custody - Booking #694573)
✓ Greg Clark, Defendant's Attorney
45 West Jefferson, 11th Floor
Phoenix, AZ 85003-2307
__ Court Administrator
__ Jail

By _____
Deputy Clerk

APPENDIX E — JURY INSTRUCTIONS

CR95-01754

THE STATE OF ARIZONA,

v.

TIMOTHY STUART RING

I am now going to tell you the rules you should follow to decide this case. It is your duty to follow these instructions.

It is also your duty to determine the facts. "Facts" means what actually happened. You determine the facts only from the evidence produced in court. You should not guess about any fact. You must not be influenced by sympathy or prejudice. You must not be concerned with any opinion that you feel I have about the facts. You are the sole judges of what happened.

You must consider all of these instructions. Do not pick out one instruction or part of one and disregard the others. However, after you have determined the facts, you may find that some instructions no longer apply.

You must then consider the instructions that do apply, together with the facts as you have determined them. Decide this case by applying these instructions to the facts which you find.

* * *

In their opening statements and closing arguments, the lawyers have talked to you about the law and the evidence. What the lawyers said is not evidence, but it may help you to understand the law and the evidence.

* * *

Appendix E

The lawyers are permitted to stipulate that certain facts exist. This means that both sides agree those facts do exist and are not disputed.

* * *

You must find the facts from the evidence in court. The evidence which you are to consider consists of exhibits and testimony of witnesses.

If an objection to a lawyer's question was sustained, you should disregard that question and any answer given.

Any testimony stricken from the court record must not be considered by you.

* * *

You must decide the believability of witnesses. In doing so, take into account such things as their ability and opportunity to observe, their memory and manner while testifying, any motive or prejudice they might have, and any inconsistent statements. Consider each witness' testimony in light of all of the other evidence in the case.

* * *

The rules of evidence ordinarily do not permit the opinion of a witness to be received as evidence. However, a witness may testify as to an opinion on a subject upon which the witness has become an expert because of education, study, or experience. You should consider the opinion of an expert and should weigh the reasons, if any, given for it. However, you

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are not bound by any expert opinion. Give the expert opinion the weight that you believe it deserves.

* * *

The State has charged the defendant with certain crimes in this case. These charges are not evidence against the defendant. You must not think the defendant is guilty just because of these charges. The defendant has pled "not guilty." This plea of "not guilty" means that the State must prove every part of each charge beyond a reasonable doubt.

* * *

Evidence can be divided into direct and circumstantial evidence. Direct evidence is the testimony of a witness that saw, heard, or otherwise observed an event. Circumstantial evidence is the proof of a fact or facts from which you may find another fact. The law makes no distinction between direct and circumstantial evidence. You must determine the weight to be given to all the evidence without regard to whether it is direct or circumstantial.

* * *

The State has the burden of proving the defendant guilty beyond a reasonable doubt. In civil cases, it is only necessary to prove that a fact is more likely true than not true, or that its truth is highly probable. In criminal cases such as this, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few

things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find the defendant guilty. If, on the other hand, you think there is a real possibility that the defendant is not guilty, you must give him the benefit of the doubt and find the defendant not guilty.

You must decide whether or not the State has proven the defendant guilty beyond a reasonable doubt. The law does not require a defendant to prove innocence. Every defendant is presumed by law to be innocent and you must start with the presumption that the defendant is innocent. The State must then prove the defendant guilty beyond a reasonable doubt. This means that the State must prove each element of the charge beyond a reasonable doubt. It is the law that no verdict of guilty can stand on mere suspicion, probability, or supposition for these alone do not warrant a conviction. If you conclude that the State has not met its burden of proof beyond a reasonable doubt, then you must find the defendant not guilty of that charge.

* * *

The crime of first degree murder with premeditation requires proof of the following three things:

1. The defendant caused the death of another person; *and*

2. The defendant intended or knew that he would cause the death of another person; *and*

3. The defendant acted with premeditation.

"Premeditation" means that the defendant's intention or knowledge existed before the killing long enough to permit reflection. However, the reflection differs from the intent or knowledge that conduct will cause death. It may be as instantaneous as successive thoughts in the mind, and it may be proven by circumstantial evidence.

* * *

The crime of first degree felony murder requires proof of the following two things:

1. The defendant and another person or persons committed or attempted to commit armed robbery; *and*

2. In the course of and in furtherance of this crime or immediate flight from this crime, the defendant or another person caused the death of any person.

* * *

The crime of conspiracy to commit armed robbery requires proof of the following things:

1. That the defendant agreed with one or more persons that one of them or another person would engage in certain conduct; *and*

2. That the defendant intended to promote or assist the commission of such conduct; *and*

3. That the intended conduct would constitute the crime of armed robbery.

* * *

Appendix E

To prove the existence of a conspiracy, the State need not show the making of an express or formal agreement. Nor need the State prove that all the means set forth in the indictment were agreed upon, nor that all the means agreed upon were actually used, nor that each and every person charged as a member of a multi-party conspiracy was such. The State must only prove the elements of conspiracy as defined in the previous instruction.

* * *

The fact that persons conduct themselves in a similar manner or associate with each other or assemble together or discuss common aims does not alone prove a conspiracy.

* * *

One may become a member of a conspiracy without full knowledge of all the details of the conspiracy. On the other hand, a person who has no knowledge of a conspiracy but happens to act in a way which furthers some object of the conspiracy does not thereby become a conspirator.

Before you find that a defendant or any other person was a member of a conspiracy, the evidence must show beyond a reasonable doubt that the conspiracy was knowingly formed and that the defendant or other person claimed to have been a member knowingly participated in the unlawful plan with the intent to promote or assist the carrying out of the conspiracy.

A person understanding the unlawful character of a plan who knowingly encourages, advises, or assists the undertaking thereby also becomes a conspirator.

Appendix E

One who knowingly joins an existing conspiracy is charged with the same responsibility as an originator or instigator of the conspiracy.

In determining whether a conspiracy exists, you should consider the actions and statements of all of the alleged participants. However, in determining whether a particular defendant was a member of the conspiracy, you should consider only that person's acts and statements. A person cannot be bound by the acts or statements of other participants until it is established that a conspiracy existed and that that person was one of its members.

* * *

In your consideration of the evidence regarding the offense of conspiracy, you should first determine whether or not the conspiracy existed, as alleged in the indictment. If you conclude that the conspiracy did exist, you should next determine whether or not the accused knowingly became a member of the conspiracy.

There may be liability even though the conspirators do not succeed in accomplishing their common object. In order for a conspiracy to be proven, it is not necessary that the prosecution show that the conspirators succeeded.

* * *

The indictment charges the defendant with the crimes of conspiracy to commit armed robbery and armed robbery. These charges are independent, and the evidence should be considered separately for each charge.

* * *

Appendix E

The crime of armed robbery requires proof of the following two things:

1. The defendant committed a robbery; *and*

2. The defendant or an accomplice was armed with a gun.

* * *

The crime of robbery requires proof of the following four things:

1. The defendant took another person's property; *and*

2. The taking was from the other person's person or immediate presence; *and*

3. The taking was against the other person's will; *and*

4. The defendant threatened or used force against any person with the intent to coerce surrender of the property or to prevent resistance to taking or keeping the property.

* * *

The crime of burglary in the first degree requires proof of two things:

1. The defendant committed a burglary; *and*

Appendix E

2. At some time between the moment of entry through flight from the scene the defendant or an accomplice was armed with a gun.

* * *

The crime of burglary requires proof of the following two things:

1. The defendant entered or remained unlawfully in or on a nonresidential structure; *and*

2. The defendant did so with the intent to commit any theft or armed robbery therein.

* * *

* * *

"Enter or remain unlawfully" means an act of a person who enters or remains on premises when such person's intent for so entering or remaining is not licensed, authorized or otherwise privileged.

* * *

"Non-residential structure" means any structure other than residential structure and includes a motor vehicle.

* * *

"Entry" means the intrusion of any part of any instrument or any part of a person's body inside the external boundaries of a structure which would include any vehicle used for business, transportation, or storage.

* * *

Appendix E

The crime of theft requires proof of the following two things:

1. The defendant knowingly controlled another person's property; *and*

2. The defendant intended to deprive the other person of the property.

* * *

"Control" or "exercise control" means to act so as to exclude others from using their property except on the defendant's own terms.

* * *

"Deprive" means to withhold the property interest of another either permanently or for so long a time period that a substantial portion of its economic value or usefulness or enjoyment is lost or to transfer or dispose of it so that it is unlikely to be recovered.

* * *

"Property of another" means property in which any person other than the defendant has an interest which the defendant is not privileged to infringe.

* * *

Appendix E

A person may be guilty of an offense committed by such person's own conduct or by the conduct of another for which such person is criminally accountable, or both.

* * *

A person is criminally accountable for the conduct of another if the person is an accomplice of such other person in the commission of an offense.

If causing a particular result is an element of an offense, a person who acts with the kind of culpability with respect to the result that is sufficient for the commission of the offense is guilty of that offense if the person solicits or commands another person to engage in the conduct causing such result, or the person aids, counsels, agrees to aid or attempts to aid another person in planning or engaging in the conduct causing such result.

* * *

"Accomplice" means a person, who, with the intent to promote or facilitate the commission of an offense

1. Solicits or commands another person to commit the offense; *or*

2. Aids, counsels, agrees to aid, or attempts to aid another person in planning or committing the offense; *or*

3. Provides means or opportunity to another person to commit the offense.

Appendix E'

An absent defendant is criminally accountable for the conduct of another if the absent defendant caused, solicited, aided, commanded, etc. the other person to commit an offense and the absent defendant had the culpable mental state required for the commission of that offense.

* * *

"Intentionally" or "with intent to" as used in these instructions means that a defendant's objective is to cause that result or to engage in that conduct.

* * *

The State must prove that the defendant did a voluntary act forbidden by law. You may determine that the defendant intended to do the act if the act was done voluntarily.

* * *

Intent may be inferred from all the facts and circumstances disclosed by the evidence. It need not be established exclusively by direct sensory proof. The existence of intent is one of the questions of fact for your determination.

* * *

"Knowingly" means that a defendant acted with awareness of or belief in the existence of conduct or circumstances constituting an offense. It does not mean that a defendant must have known the conduct is forbidden by law.

* * *

Appendix E

If the State is required to prove that the defendant acted "knowingly," that requirement is satisfied if the State proves that the defendant acted "intentionally."

* * *

If you find the defendant guilty of the crime of conspiracy to commit armed robbery, armed robbery, or burglary first degree, you must then determine whether or not the offense was a dangerous offense. An offense is a dangerous offense if it involved the discharge, use, or threatening exhibition of a gun.

* * *

It is no defense to the crime charged against the defendant that another person or persons not now on trial might have participated or cooperated in the crime. You should not guess the reason for the absence from the courtroom of such other person or persons. The only matter before you for your decision is the guilt or innocence of Timothy Stuart Ring.

* * *

Evidence of other bad acts of the defendant has been admitted into evidence in this case. Such evidence is not to be considered by you to prove the character of the defendant or to show that he committed any offense charged. It may, however, be considered by you regarding the defendant's motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

* * *

Appendix E

All twelve of you must agree on a verdict. All twelve of you must agree whether the verdict is guilty or not guilty. When you go to the jury room you are to choose a foreperson who will be in charge during your deliberations and who will sign any verdict.

You will be given ten forms of verdict upon which to indicate your decision. They read as follows.

* * *

In deciding whether the defendant is guilty or not guilty, do not consider the possible punishment. Punishment is decided by the judge, not by the jury.

APPENDIX F — NOTICE OF AGGRAVATING FACTORS AND WITNESSES DATED DECEMBER 10, 1996

IN THE SUPERIOR COURT OF
THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

NO. CR 95-01754

STATE OF ARIZONA,

Plaintiff,

vs.

TIMOTHY RING,

Defendant.

STATE'S RULE 15.1(g) NOTICE OF AGGRAVATING FACTORS AND WITNESSES

(Assigned to the Honorable Gregory Martin)

The State of Arizona, by and through undersigned counsel, pursuant to 17 A.R.S. Rules of Criminal Procedure Rule 15.1(g) hereby discloses and lists the aggravating factors and the evidence the State will present at the Death Penalty Hearing.

On December 6, 1996 the defendant was convicted of First Degree Murder, Conspiracy to Commit Armed Robbery, Armed Robbery, Burglary and Theft. The Armed Robbery, Burglary and Theft convictions were found by the Jury to be dangerous offenses.

Appendix F

The aggravating factors which the State intends to prove are:

1) A.R.S. § 13-703(F)(2) — The defendant has been convicted of a serious offense, to-wit: Armed Robbery, whether preparatory or completed.

2) A.R.S. § 13-703 (F)(5) — The defendant committed the offense as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value.

3) A.R.S. § 13-703 (F)(6) — The defendant committed the offense in an especially heinous, cruel or depraved manner.

EVIDENCE TO PROVE THE AGGRAVATING FACTORS;

The State requests this Court to take Judicial Notice of all the evidence and testimony presented at trial which was proven beyond a reasonable doubt as proof of the aggravating factors pursuant to A.R.S. § 13-703(c).

In addition the State may call the following witnesses:

Detective Thomas Clayton

William Morris

Dr. Philip Keen

The State reserves the right to supplement this list if needed to prove the allegations.

Appendix F

In addition to the Exhibits admitted during trial, the State may introduce additional photographs or medical records of the victim's injuries.

Submitted December 10th, 1996.

RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY

BY s/ Alfred M. Fenzel
Alfred M. Fenzel
Deputy County Attorney

Copy of the foregoing
mailed\delivered this
10th day of December, 1996,
to:

The Honorable Gregory Martin
Judge of the Superior Court

Mr. Gregory Clark
Attorney at Law
45 W Jefferson St Fl 12
Phoenix, AZ 85003-2330

BY s/ Alfred M. Fenzel
Alfred M. Fenzel
Deputy County Attorney

APPENDIX G — EXCERPTS OF PRESENTENCE HEARING IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA DATED OCTOBER 9, 1997

IN THE SUPERIOR COURT OF
THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

CR-95-01754

STATE OF ARIZONA,

Plaintiff,

vs.

TIMOTHY RING,

Defendant.

Phoenix, Arizona
October 9, 1997

BEFORE: THE HONORABLE GREGORY H. MARTIN

Reporter's Transcript of Proceedings

Presentence Hearing

Janet Freeby
Court Reporter

APPEARANCES

For The State: Alfred M. Fenzel
Deputy County Attorney

For The Defendant: Greg Clark
Treasure L. VanDreumel
Attorneys at Law

Appendix G

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[35] Okay. Mr. Fenzel.

MR. FENZEL: Thank you. We call James Greenham.

THE COURT: Come on up, Mr. Greenham.

THE COURT: Mr. Greenham, are you able to bring that mike to you?

THE WITNESS: Yes.

THE COURT: Bring it right to your mouth, if you can. Can you help, Mr. Fenzel?

THE WITNESS: That it?

Appendix G

THE COURT: Yes. Keep your voice up so we can all hear you, please.

The record should show that Mr. McVay is here, counsel for Mr. Greenham.

JAMES GREENHAM,

a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FENZEL:

Q. Would you please state your name for the record?

A. James Harold Greenham.

Q. Mr. Greenham, how old are you?

A. Thirty-one.

[36] Q. You're currently in custody; is that correct?

A. Yes, sir.

Q. Are you in custody in relation to an incident that happened on November twenty-eight, nineteen ninety-four?

A. Yes, sir, I am.

Appendix G

Q. Is that incident an armored car robbery at the Arrowhead mall on that Monday following Thanksgiving back in nineteen ninety-four?

A. Yes, sir, it is.

Q. Have you entered a plea of guilty in connection with that case?

A. Yes, sir, I have.

Q. What have you pled guilty to?

A. Second degree murder.

Q. What else have you pled guilty to, if anything?

A. Two counts of armed robbery.

Q. What are the two counts of armed robbery related to?

A. One count's related to an armored car incident. The second count, I believe, is related to the PACE incident on December twenty-third.

Q. Do you have an understanding of what your [37] sentence will be? You haven't been sentenced; have you?

A. No, I have not.

Appendix G

Q. Do you understand what your sentence will be in connection with these pleas?

A. Yes, I do.

Q. Can you please tell us what you expect your sentence to be?

A. Twenty-seven point five years.

Q. With respect to that plea agreement, do you have any obligations?

A. Yes, sir, I do.

Q. And what are your obligations?

A. To cooperate fully with the State of Arizona.

Q. As part of your obligation to tell the truth?

A. Yes, sir.

Q. Has anybody threatened you or forced you to become a witness in this case?

A. No, sir, they have not.

Q. With respect to November twenty-eighth, nineteen ninety-four, were you present during the armored car robbery at the Arrowhead mall?

A. Yes, sir, I was.

Appendix G

Q. Would you please tell the Court how you [38] came to be present at the Arrowhead mall?

A. Myself, Mr. Ferguson and Timothy Ring had planned on robbing an armored car that was parked at the mall.

Q. When did you plan on robbing the armored car?

A. There was two plans. Early in November. A final stage plan was set at Mr. Ring's house that afternoon.

Q. The robbery happened about twelve thirty, one thirty in the afternoon; is that right?

A. Yes, sir.

Q. Did you meet at Mr. Ring's house before that?

A. Yes, sir, we did.

Q. Who met in Mr. Ring's house before the armored car robbery at the Arrowhead mall?

A. Myself and Mr. Ferguson.

Q. Was anybody else with you?

A. No, sir.

Q. What, if anything, was discussed when you were at Mr. Ring's house that morning?

A. We were — we discussed how we were going to take down the van, what we were going to do in respect to tactical decisions.

[39] Q. Who was involved in those discussions?

A. Myself, Mr. Ferguson and Mr. Ring.

Q. What, if anything, did Mr. Ring, or what role did Mr. Ring play in those discussions? What did he say?

A. Basically, Mr. Ring had I guess taken the role as leader because he laid out all the tactics.

Q. What were the tactics that Mr. Ring laid out?

A. Who was going to take part in what. Who was going to do what in the role of the armored car robbery.

Q. Did there come a time when you left Mr. Ring's house and went to the mall where the robbery took place?

A. Yes, there was.

Q. How did you get there?

A. Vehicles.

Q. What kind of cars?

A. Two trucks. My Chevy pickup truck, Mr. Ring's four-wheel drive Toyota.

Q. What kind of truck were you driving?

A. Brown Chevy four-wheel drive.

Q. What kind of truck was Mr. Ring driving?

A. A newer Toyota pickup truck.

[40] Q. What color was it?

A. Red.

Q. What vehicle were you in?

A. The Chevy pickup truck.

Q. What truck was Mr. Ring in?

A. Toyota four-wheel drive.

Q. Where was Mr. Ferguson?

A. He was with me in my pickup truck.

Q. What happened when the armored car pulled up?

A. The armored car pulled up. We had watched it for a couple of minutes. The driver then turned, opened his door and started smoking a cigarette. I got out of my pickup truck, stood by the bumper. Mr. Ring shot Mr. Magoch. Then I walked towards the armored car, I pushed Mr. Magoch over, I got in the armored car and I drove away.

Appendix G

Q. With respect to the way it was done physically, where did the armored car pull up in relation to the Dillard's entrance?

A. Right in front of Dillard's. Probably right next, right near the entrance of the Dillard's.

Q. In relation to that entrance, where was your brown pickup truck parked?

A. Thirty to forty yards facing the driver's [41] door of the armored car vehicle.

Q. What direction was your car or your truck?

A. I believe my truck was facing westbound. Kind of southwest bound.

Q. And what is — and was your truck at any particular angle with respect to the armored van?

A. Yes, it was.

Q. How was it parked?

A. It was parked basically at an angle to where I could see right into the driver's compartment.

Q. What kind of angle?

A. Probably forty-five degree angle, I would say, something like that.

Appendix G

Q. Were you able to see in the driver's compartment?

A. Yes, sir, I was.

Q. How long had you been in that parking lot prior to the armored car arrival?

A. Maybe a half hour or so.

Q. Was Mr. Ring also in that parking lot?

A. Yes, sir, he was.

Q. Do you know where in that parking lot he was?

A. No, sir, I do not.

Q. Why is it that you do not know?

[42] A. Because I could not see Mr. Ring's pickup truck.

Q. Why was that?

A. I had the window covering on my windshield, my front windshield.

Q. What kind of window covering?

A. It was like window shades.

Q. One of those sun visor things?

A. Yes, sir.

Q. Did you have an idea where Mr. Ring was?

A. Yes, I had a general idea.

Q. And is there a reason why you had a general idea where he was?

A. Pre planning.

Q. Could you please tell the Court about that pre planning?

A. On one occasion, we had set up.

Q. You're saying we, who's we?

A. Myself and Mr. Ring. Myself and Mr. Ring had set up on the armored car to watch the armored car.

Q. Where did you set up on the armored car?

A. In relation to where Mr. Ring said he was going to park to do the shot.

Q. And where did Mr. Ring tell you he was going to park to do the shot?

[43] A. It was probably thirty, forty yards west of the armored car itself.

Q. Were you armed?

A. Yes, sir, I was.

Q. Was Mr. Ferguson armed?

A. Yes, sir, he was.

Q. Was Mr. Ring armed?

A. Yes, sir, he was.

Q. Were you, prior to the armored car arriving at the mall, in any communication with Mr. Ring?

A. Yes, sir.

Q. What kind of — how was it that you were able to maintain communication with him?

A. Two-way radios.

Q. Who had radios?

A. Myself, Mr. Ring both had two-way radios.

Q. Did Mr. Ferguson have anything?

A. Mr. Ferguson had a CB type of scanner radio.

Q. Talking about Mr. Ferguson. Do you know his full name?

A. William Ferguson.

Q. Do you know anything about him?

A. Other than he was a police officer twenty years, that's all I know about him.

[44] Q. Where was he a police officer?

A. Phoenix.

Q. What kind of weapon did you have?

A. A forty-five semi-automatic.

Q. What kind of weapon did Mr. Ferguson have?

A. I believe it was a semi-automatic, I don't know what make it was or caliber.

Q. What kind of weapon did Mr. Ring have?

A. Mr. Ring had a twenty-two rifle, plus a handgun in his fanny pack.

Q. What kind of twenty-two rifle?

A. I believe it was a Ruger, I'm not sure.

Q. Was it in any way modified, have any special equipment with it?

A. Yes, sir, it did.

Q. What was it?

A. It had a scope and a homemade silencer.

Q. Had you seen that rifle before?

A. Yes, sir, I had.

Q. When had you seen it before?

A. On other occasions when he had taken it out to try it out. On one prior occasion when myself, Mr. Ring, Mr. Sanders, Mr. Robbins set up to kill James Gonzales.

[45] MR. CLARK: Objection. Relevance, Judge.

THE COURT: I'll strike that last part of the answer. Sustained.

BY MR. FENZEL:

Q. With respect to the incident, you're all set up, armored car pulls up. What happens?

A. The armored car pulls up. We watched him. He had turned sideways, he opened his door about six to eight inches. He started smoking a cigarette.

Q. When you say he, talking about the driver of the van?

A. Yes, sir. I got out of my pickup truck, I stood by the bumper of my vehicle. I heard the shot break. I heard the shot go off, basically.

Q. What did it sound like?

A. It sounded like a pellet gun.

Q. I'm sorry, I can't hear you?

A. It sounded like a pellet gun.

Q. What happened then?

A. I then walked to the armored car. I opened the door all the way, I pushed Mr. Magoch over. I got in the armored vehicle, and I drove away.

Q. What were you wearing?

A. I was wearing Levi's, a large blue windbreaker. I had a baseball cap turned backwards. I [46] had a pair of sunglasses on.

Q. Did you have gloves on?

A. Yes, sir, I did.

Q. What happened after that?

A. We went to the church parking lot.

Q. How did you get to the church parking lot?

A. I drove the armored car there.

Q. Did you have some sort of prearranged plan to arrive in that church parking lot?

A. No, I did not.

Q. And how was it that you got from the mall to that church parking lot?

A. Mr. Ring told me by two-way radio where to go, which direction to turn.

Q. How was he able to do that?

A. By two-way radio.

Q. Was that as you're driving from the mall in that direction?

A. Yes, sir.

Q. Where was Mr. Ferguson when all of this was going on?

A. He was sitting in my brown four-wheel drive.

Q. Did Mr. Ferguson also follow you?

A. At one point in time, he followed Mr. Ring.

[47] Q. How was it that Mr. Ferguson was able to follow you and Mr. Ring?

A. He had heard which directions I was turning over the radio by his scanner.

Q. Did there come a time when you actually got to the church parking lot?

A. Yes, there was.

Q. What happened when you got to the church parking lot?

A. I checked on Mr. Magoch again to make sure he was alive, which he was alive. I got in the back of the van.

THE COURT: You say he was alive?

THE WITNESS: Yes, sir, I did.

THE COURT: He was?

THE WITNESS: Yes, sir, he was.

BY MR. FENZEL:

Q. He was still breathing?

A. He was still breathing.

Q. Was he conscious?

A. No, he was not.

Q. Do you know where he had been wounded?

A. No, I do not.

Q. What happened then?

[48] A. I got in the back of the armored van. I started gathering up all of the sacks of money. I started putting them

in the larger bags. When that was completed, I set them near the side exit door on the passenger side of the van itself. I then called Mr. Ring over the radio, asked him to come up so we could start offloading the van.

Q. Did that happen?

A. Yes, sir, it did.

Q. How was that accomplished?

A. Over two-way radio.

Q. Did Mr. Ring come up?

A. Yes, sir, he did.

Q. And did you offload the money?

A. Yes, sir, we did.

Q. How long did it take?

A. Maybe five minutes, if that. No more than ten.

Q. Where did the money go to?

A. In the back of Mr. Ring's king cab pickup truck.

Q. That's in the red truck?

A. Yes, sir.

Q. Where's Mr. Ferguson while all of this is going on?

[49] A. Mr. Ferguson had not yet arrived. Mr. Ferguson hadn't arrived until after we had completed offloading the vehicle.

Q. Did he in fact pull into the church parking lot while you were still there?

A. Yes, he did.

Q. What happened after that?

A. We had completed offloading the van, I got back in my pickup truck, and then we drove off from the church.

Q. Where did you go?

A. We headed up Grand Avenue, I believe. We stopped in a vacant field somewhere along the way.

Q. Why did you stop in a vacant field?

A. So Mr. Ring could take off his fictitious plate that he had on the back of his truck.

Q. What happened then?

A. We then left from the field. We started driving towards Yarnell.

Q. Did you stop on the way to Yarnell, other than in the field?

A. Yes, sir, we did.

Q. Where did you stop?

A. We stopped somewhere in the desert.

Q. Approximately where, do you know?

[50] A. Somewhere before Yarnell. I can't be more specific, I'm not sure.

Q. Did you ever go back there with the police?

A. Yes, sir, I did.

Q. And showed the police where that was?

A. Yes, sir, I did.

Q. What did you do when you were in that particular location?

A. During the robbery?

Q. Just after the robbery. The same day of the robbery, you're at this place, what did you do, if anything?

A. We separated all the money from the checks, we separated all the spindle cash from all the stuff that couldn't be used.

Q. When you say we, who's we?

A. Myself, Mr. Ring, Mr. Ferguson.

Q. Anybody else?

A. No, sir.

Q. Was anybody else involved in the actual robbery of the armored car on that date besides you, Ring and Ferguson?

A. And the actual assault of the vehicle?

Q. Yes.

A. No, sir.

[51] Q. Nobody else there?

A. Not that I'm aware of, no.

Q. After you split the money from the checks, the cash from the checks, what did you do?

A. After we did that, we went to another location, and we started burning all the checks and the receipts.

Q. You say you went to another location. How far away were these two locations?

A. Maybe twenty, thirty yards apart.

Q. Was yours in this field that he went from one place in the field to another, and you burned the checks?

A. Yes, sir.

Q. Where were you when all of this was going on?

A. During the burning?

Q. Burning of the checks.

A. I was on top of the hill being a lookout looking for oncoming traffic.

Q. What happened after you finished doing all of that?

A. We loaded back up. Mr. Ring and Mr. Ferguson got in Mr. Ring's vehicle. All the cash was placed in my pickup truck, we then left from the [52] burn site.

Q. When Mr. Magoch was in the van, was he armed?

A. Yes, he was.

Q. Do you know what, if anything, happened to his gun?

A. I had taken the one I had gotten in the vehicle.

Q. When you left the church parking lot, what happened to Mr. Magoch's gun?

A. We took it with us.

Q. You say we took it with us, who's we?

A. Myself, Mr. Ring.

Q. What did you do with the gun, if anything, when he came out of the van with it?

A. I believe I gave it to Mr. Ring, if I recall correctly.

Q. Can you tell us what ultimately happened to that weapon?

A. Mr. Ring had taken it and thrown it in a man-made pond of some sort. I don't recall where that location is at.

Q. Did you take police to where that location was?

A. Yes, sir.

[53] Q. Did you show them where the gun, or the lake was that the gun was thrown into?

A. Yes, I did.

Q. When was that gun thrown into the lake?

A. I believe it was the night of the robbery.

Q. Who threw the gun into the lake?

A. Mr. Ring.

Q. We're talking about Mr. Ring? How long have you known Timothy Ring?

A. On and off from the spring of nineteen ninety-two, I believe.

Q. Is the person known to you as Timothy Ring present in the courtroom?

A. Yes, sir, he is.

Q. And could you please tell us where he is and what's he wearing?

A. He's sitting next to Mr. Clark. He's wearing a black and white jail uniform, the same thing I have on.

MR. FENZEL: Your Honor, may the record reflect the witness has identified the defendant?

THE COURT: It may.

BY MR. FENZEL:

Q. After you're in the field, you drive north [54] into Yarnell; is that right?

A. Yes, we do.

Q. After you get up to Yarnell, what happens?

A. We just drove through Yarnell, I believe we drove through Prescott. I know there's one point in time we had stopped at a Burger King to get something to eat, and then we came back down I-17 southbound to the Valley.

Q. When you say we, who's we?

A. Myself, Mr. Ring and Mr. Ferguson.

Q. What car, or what vehicle were you in?

A. I was in my brown Chevy four-wheel drive.

Q. Was anybody in that vehicle with you?

A. No, sir.

Q. Where was Mr. Ferguson?

A. Mr. Ferguson was riding with Mr. Ring.

Q. When he got back into the Phoenix area, where did you go?

A. Before we came back to Happy Valley Road, Mr. Ring came over the radio, told me to go to the Albertson's parking lot off of I-17 and Bell Road and wait for him there. Mr. Ring was going to take Mr. Ferguson back to Mr. Ring's house to drop Mr. Ferguson off to pick up his vehicle. Mr. Ring was going to come back and meet me at the Albertson's.

[55] Q. Did that happen?

A. Yes, sir, it did.

Q. After Mr. Ring met you at this Albertson's, what did you do then?

A. We had parked my vehicle, my brown Chevy four-wheel drive across the street at the Smitty's. I believe after that we had driven to the pond to dispose of

Mr. Magoch's weapon. Mr. Ring had dismantled his twenty-two rifle that he had with him that he shot Mr. Magoch with, and we drove to a motel.

Q. What kind of shot is Mr. Ring?

A. He's a very excellent shooter.

Q. You went to a motel. What happened at the motel?

A. I stayed in the motel with all the money. Mr. Ring went home.

Q. Did there come a time where you saw Mr. Ring again?

A. Yes, sir, there was.

Q. When was that?

A. The day after.

Q. Would you please tell the Court the circumstances that you saw Mr. Ring the day after?

A. Mr. Ring had came back to the motel to pick me up, basically.

[56] Q. Where did you go?

A. Drove around the Valley for a little bit. At one point in time, we went to the mall. Mr. Ring went to the mall. Mr. Ring wanted to go and talk to Mr. Ferguson.

Q. You said the mall. Is that the same mall where the robbery took place?

A. No, sir, there was a mall which Mr. Ferguson was working at the time.

Q. Where was Mr. Ferguson working at the time?

A. It was for a camera shop. I don't recall which mall right now. It was for a camera shop.

Q. Do you know whether or not it was the Paradise Valley mall?

A. It's a possibility.

Q. You went to the mall. What happened when you went to the mall?

A. Mr. Ring had gone in to the mall to talk to Mr. Ferguson. I had stayed in the vehicle to basically sit on the cash.

Q. Did there come a time when you left that area?

A. Yes. Yes, there was.

Q. Where did you go?

A. I believe we made one stop at Shooters [57] World. We made a second stop at another motel.

Q. Did there come a time that you went to Sun City?

A. Yes, there was.

Q. When did that occur?

A. That was the evening after the robbery.

Q. It was the same day that you had gone to the mall later on that night, is that what you're talking about?

A. Yes, sir, it was.

Q. Where in Sun City did you go?

A. We went to Mr. Ferguson's mother's house.

Q. Is it a house or is it an apartment?

A. It's an apartment.

Q. What did you do when you were there?

A. We started breaking down the money. We started breaking down the denominations of the cash.

Q. How long did that take?

A. In actual time, I'm not sure. I know it took a couple of hours.

Q. What happened to the money after you broke it all down?

A. It was split up.

Q. When you said it was split up, how was it split up?

[58] A. It was first split up in three divided ways. Mr. Ferguson received his share from Mr. Ring. Both mine and Mr. Ring's had gone in the same duffel bag.

Q. Did Mr. Ring in fact keep your share?

A. Yes, sir, he did.

THE COURT: Mr. Fenzel, how much more direct do you have? Probably should take a break.

MR. FENZEL: Okay.

THE COURT: Let's break for just ten minutes.

MR. FENZEL: Okay.

(Recess taken.)

THE COURT: Go ahead, Mr. Fenzel.

BY MR. FENZEL:

Q. Mr. Greenham, you said that it took several hours to count the money while you were over at Mr. Ferguson's parents' apartment; is that right?

A. Yes, sir.

Q. Can you please describe the mood — first of all, who was there during the counting of the money?

A. Myself, Mr. Ring and Mr. Ferguson.

Q. Was there anybody else involved in the counting of the money?

A. No, sir, no one else was present.

[59] Q. No one else was involved in the robbery?

A. No, sir. Not the physical assault and stuff.

Q. Can you please describe the mood of the three of you while you're counting the money?

A. It was a pretty happy mood.

Q. And why do you say it was a pretty happy mood?

A. Because we had all the money.

Q. Was that expressed at all by anybody? And if so, how?

A. I don't understand your question.

Q. Well, you said you were happy. You were happy, right?

A. Not by the fact of having the money, no. I was distraught because Mr. Magoch was dead. The fact that we had the money was a secondary issue.

Q. With respect to the death of Mr. Magoch, was that at all discussed?

A. Yes, sir, it was.

Q. Can you please tell the Court how the fact, or the death of Mr. Magoch was discussed came about? I'm talking about at the time you counted the money, is that right?

A. Correct.

[60] Q. Okay. What was discussed?

A. Basically, actual shooting of Mr. Magoch.

Q. Who discussed it?

A. Mr. Ring.

Q. What, if anything, did Mr. Ring say about the actual shooting of Mr. Magoch?

A. Mr. Ring had asked just an offhand — he didn't ask myself and Mr. Ferguson in general, he just asked, you guys are forgetting something, meaning myself and Mr. Ferguson.

Q. Was there a response to that?

A. Mr. Ferguson said, what. And Mr. Ring had stated, you're forgetting to congratulate me on my shot.

Q. Mr. Ring said to both of you, you're forgetting something?

A. Correct.

Q. Mr. Ferguson responded, what, and Mr. Ring then said, forgetting to congratulate me on my shot?

A. That's correct.

Q. What happened then?

A. Mr. Ferguson stated, nice shot. It was left at that.

Q. Did there come a time where you finished counting money?

A. Yes, there was.

[61] Q. Did Mr. Ferguson then take his share of the money?

A. Yes, he did.

Q. You said that your share was put into a duffel bag?

A. I am — excuse me?

Q. Your share was put into a duffel bag with Mr. Ring's share?

A. Yes, sir, it was.

Q. What happened to your share?

A. It went to Mr. Ring's home.

Q. How did it get there?

A. By Mr. Ring's vehicle.

Q. Did there come times when you would spend money after that?

A. Yes, sir.

Q. How did it come about that you were able to spend money after that?

A. Mr. Ring would give me money.

Q. Would you have to ask for it?

A. Yes, sir.

Q. And how would you go about asking for it?

A. I would just tell him I need money, and he would give me spending money.

Q. Mr. Greenham, Mr. Magoch, was he at all [62] involved with the planning of this robbery?

A. No to my knowledge, no.

Q. You made some statements along the way that are different from the statements you're making now; is that right? You told people at one point Mr. Magoch may have been involved; is that right?

MR. CLARK: Judge, I would object, it's leading. I would like some foundation.

THE COURT: Sustained.

BY MR. FENZEL:

Q. Did you ever make statements different from what you're telling us today to anybody?

A. Yes, I did.

Q. And was there a reason why you would have made those statements?

A. Yes, sir, there was.

MR. CLARK: Judge, once again, I'm going to object for lack of foundation. What statements, when.

THE COURT: Yes. Sustained.

BY MR. FENZEL:

Q. Did you ever speak to Mr. Clark or Mr. Foreman or anybody else and tell them something differently than what you said today?

[63] A. Yes, sir.

MR. CLARK: Okay, Judge, it's compound.

THE COURT: That's compound. It calls for yes or no. Let's lay the foundation for the statements, and then . . .

BY MR. FENZEL:

Q. After you were represented by Mr. Blischak, did there come a time that you were not represented by Mr. Blischak?

A. Yes, sir, there was.

Q. You were representing yourself?

A. Yes, sir, I was.

Q. You were in the jail?

A. Yes, sir.

Q. During that time frame, did you later on get Mr. Blischak back on the case and Mr. McVay back on the case representing you? Is that correct?

A. Mr. McVay didn't come on until later.

Q. So my question is going to be addressed to the time when you were representing yourself.

A. Correct, I understand.

Q. Did you speak to Mr. Clark?

A. Yes, sir, I did.

Q. Did you speak to Mr. Foreman?

[64] A. Yes, sir, I did.

Q. You told them things different than what you said today?

MR. CLARK: Objection, leading, Judge.

THE WITNESS: Yes, sir.

BY MR. FENZEL:

Q. What did you tell them?

A. I made false statements to them in the respect that Mr. Ring, Mr. Ferguson did not do this crime.

Q. Why did you make those statements to Mr. Clark and/or Mr. Foreman?

A. Death threats. Or threats from Mr. Ring.

Q. Would you please tell the Court about that?

A. I had received death threats from Mr. Ring on two separate occasions.

Q. In what form were the death threats you received from Mr. Ring?

A. They were relayed to me by somebody else.

Q. How do you know they came from Mr. Ring?

A. I was told by jail personnel.

Q. With respect to what you testified to today, is that what happened with respect to the robbery?

[65] A. Yes, sir, it is.

MR. FENZEL: No further questions.

THE COURT: Mr. Clark.

MR. CLARK: Thank you, Judge.

CROSS-EXAMINATION

BY MR. CLARK:

Q. Mr. Greenham, you certainly know who I am, don't you?

A. Yes, sir, I do.

Q. This is not the first time we've had the opportunity to speak about the events that have led us to this point in time; correct?

A. No, sir, it's not.

Q. Okay. You and I have certainly had the opportunity when you were going pro per to speak about the facts of the case; correct?

A. Yes, sir, we have.

Q. And in connection with those conversations, you were provided either by myself or Mr. Ferguson's lawyers with DRs, pleadings, police reports, all related to the Wells Fargo homicide; correct?

A. Yes, sir, I was.

Q. Now, with respect to your arrest, that [66] occurred in February of nineteen ninety-five; correct?

A. Yes, sir.

Q. Okay. And during this time frame, you had a significant drug habit; correct?

A. Correct.

Q. Okay. Your drug of choice during this period of time is crystal meth; correct?

A. Correct.

Q. You had a drug habit of approximately two hundred fifty dollars a week; correct?

A. I wouldn't put a dollar figure on it, no. I'm not sure how much I spent a week.

Q. Do you recall having a conversation with me on April four, nineteen ninety-six, in Madison Street Jail?

A. I remember having a conversation with you, I don't recall the date.

Q. Okay. Let me digress for a moment here. Before we begin to talk about that conversation, it's true that on the date of your arrest, you are interviewed by Glendale Police Department; correct?

A. That's correct.

Q. Specifically, you're interviewed by Tom Clayton and Bruce Lowe; correct?

A. Correct.

[67] Q. Okay. With respect to that interview, it was certainly tape recorded; correct?

A. To my knowledge, yes.

Q. Okay. You've been provided transcripts of that statement; correct?

A. Yes, sir, I have.

Q. I believe I gave them to you, Mr. Blischak may have given them to you; correct?

A. Correct.

Q. Okay. And at the time of that statement, you were under the influence of crystal meth; correct?

A. That's correct.

Q. Okay. In fact, at that time, you had been on a binge for about three or four days; is that correct?

A. That's correct.

Q. Now, early on in this case, you enter into, subsequent to these statements and to your arrest, you enter into a deal with the State; correct?

A. That's correct.

Q. And that deal is not unlike the one that you presently have; correct?

A. That's correct.

A. That's correct.

Q. It does differ in some respects though; correct?

[68] A. That's correct.

Q. And in connection with that deal, you were set to testify against Mr. Ferguson and Mr. Ring; correct?

A. Yes, sir.

Q. You were later allowed by Judge Ryan to back out of that deal though; correct?

A. Yes, sir.

Q. And at that point in time, you were allowed to also go pro per; correct?

A. Yes, sir.

Q. And you in effect were acting as your own counsel; correct?

A. Yes, sir.

Q. I believe the time frame that we're talking about is probably March, late March of nineteen ninety-six; correct?

A. I'm not specific on dates, sir.

Q. Okay. In connection with your being allowed by the Court to act as your own counsel with the aid of Mr. Blischak, correct me if I'm wrong, you communicated with me by a letter in April of nineteen ninety-six, correct? Via letter?

A. I know I communicated with you by letter, I'm not sure the date.

[69] Q. Okay. And that letter you wrote me was basically an invitation for me to come up and see you in the Madison Street Jail to discuss something very important; correct?

A. Correct.

Q. Okay. That was a letter that was written by yourself; correct?

A. Yes.

Q. And it was delivered through the U.S. postal service to me; correct?

A. I'm assuming so, yes, sir.

Q. Well, in answer to that letter, I did write you back; fair statement?

A. Yes, sir.

Q. And indicated that I would accept your proposal and come up and speak with you about whatever it was that was important; correct?

A. Yes, sir.

Q. And when I spoke to you, it was with regard to the facts of this case, and about what you wanted to say with regard to your own case; fair statement?

A. Yes, sir.

Q. Okay. As a result of that initial meeting, I came back on two different occasions, and later Mr. Foreman and Mr. Hart came up to speak to you as [70] well; fair statement?

A. Yes, sir.

Q. And in connection with my second visit and third visit, I tape recorded you; correct?

A. Your second and third visit?

Q. Yes, sir.

A. I know one visit was tape recorded, I'm not aware of any more.

Q. Okay.

Subsequent to my visits with you, Mr. Ring had his trial; correct?

A. I don't recall that. I believe our discussions were before Mr. Ring's trial.

Q. Okay. But after our discussions, Mr. Ring has his trial; correct?

A. Correct.

Q. Okay. Thereafter, you are, after Mr. Ring's conviction, you are once again allowed to have counsel, or you petition to have counsel, and Mr. McVay is appointed, and you thereafter enter into this new plea; fair statement?

A. Correct.

Q. Okay. Part of your plea is certainly that you have stipulated to do twenty-seven point five years; correct?

[71] A. Yes, sir.

Q. You pled to second degree murder and two counts of armed robbery; correct?

A. Yes, sir.

Q. Okay. You have not been sentenced yet; correct?

A. No, sir, I have not.

Q. Okay. And correct me if I'm wrong, you're not going to be sentenced until you have absolutely lived up to the terms of the agreement and cooperated with the State; correct?

A. That's correct.

Q. And for the record, that cooperation entails your testifying certainly at this hearing against Mr. Ring; correct?

A. Yes, sir.

Q. And at any trial of Mr. Ferguson; correct?

A. Yes, sir.

Q. Okay. It also allows you to escape the death penalty though; correct?

A. Yes, sir.

Q. Now, Mr. Fenzel said on his direct, part of your agreement is that you tell the truth; correct?

A. Yes, sir.

Q. Okay. Let's talk about that a little bit.

[72] You have been provided with all of the police reports in this case. You early on participated in the motions relative to the wiretap; correct?

A. I'm assuming I was provided with all of the police reports, yes, sir.

Q. Okay. And I know, and in all fairness, at that early on stage in your case, you were not being provided with everything; fair statement?

A. Correct.

Q. Okay. Nonetheless, you know about the affidavits that have been filed in this case to get the wiretaps; correct?

A. Yes, sir.

Q. You know about the testimony related to those hearings and how those wiretaps came into effect; fair statement?

A. Yes, sir.

Q. Okay. You know that part of the probable cause to get the wiretap and to eventually put a hard wire into your apartment came from a young lady by the name of Judy Espinoza; correct?

A. Yes, sir.

Q. Now, who is Ms. Espinoza?

A. Associate.

Q. She was your girlfriend at the time; [73] correct?

A. I don't consider her a girlfriend, no, sir.

Q. She was not your girlfriend back in November of ninety-four, January-February of ninety-five?

A. I believe I met with her sometime in November and December of ninety-four. I don't recall ever being with her in January or February of ninety-five.

Q. Okay. Isn't it true that you lived with Ms. Espinoza until she threw you out in December of nineteen ninety-four?

A. Correct.

Q. Okay. Now, you know that she was one of the witnesses who came forth and was utilized in the wiretap affidavits in order to get the hard wire in your home; correct?

A. Correct.

Q. You know that her statement was that, quote, you came home in November of ninety-four at or near the day of the robbery and said, quote, I had to shoot somebody, end quote. Do you remember that?

A. I remember her statement, yes, sir.

Q. Are you denying that you ever made that statement?

[74] A. Yes, sir, I am.

Q. So that statement never occurred?

A. No, sir, it did not.

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Q. Now, you have told us that you were present during the robbery at the Arrowhead mall; correct?

A. Yes, sir.

Q. And that robbery was the result of some planning that occurred at least on two occasions; correct?

A. Yes, sir.

Q. And you told us the people who were present at the plan and that there were two plans, one in early November of ninety-four, and one the afternoon before the robbery; correct?

A. Yes, sir, that's correct.

Q. And you also told us on questioning from Mr. Fenzel with regard to who was present, you said myself, Mr. Ring, Mr. Ferguson, quote, they were present at the physical assault itself, end quote. Do you remember that?

A. Repeat that, please.

Q. Well, you have distinguished between being present at the robbery and who was present during the planning, fair statement?

A. Correct.

[75] Q. Are there other people who were present during the planning that you haven't told us about?

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A. No, there's not.

Q. Okay. Then what did you mean when you told Mr. Fenzel that no one else was present except myself, Mr. Ring and Mr. Ferguson at the physical assault itself?

A. Just what I said. No one was present during the physical assault of the armored car.

Q. And are you also telling us that nobody else at all ever was involved in the planning of the Arrowhead mall robbery?

A. I don't know that. Myself, Mr. Ring and Mr. Ferguson planned this robbery ourselves. I do not know if anyone else was involved.

Q. Okay.

Q. You told us that all the decision-making in this case was made by Mr. Ring; correct?

A. Yes, sir.

Q. You told us that he was, quote, the leader, end quote, right?

A. Yes, sir.

Q. Two trucks were used, your brown Chevy truck, and Mr. Ring's red Toyota truck; correct?

A. Yes, sir

Appendix G

[76] Q. You told us about the scenario of how you guys met at the mall, and you met there before because you've set up on this armored car; correct?

A. That's correct.

Q. You also told us about how you were parked at a forty-five degree angle from the armored van, and how Mr. Ring was approximately thirty to forty yards away. Fair statement?

A. During the assault?

Q. Yes, sir.

A. I never made that statement.

Q. Didn't you tell us on direct a few minutes ago that Mr. Ring was parked approximately thirty or forty yards west?

A. I stated that when we had surveilled the van, yes. I did not state that when we had made the assault.

Q. How far away was he when you did the actual assault?

A. I don't know.

Q. Okay. Isn't it true that you told Detective Clayton in February of ninety-five when you were arrested that Mr. Ring, quote, sniped Mr. Magoch from about a hundred and fifty feet away?

A. I don't recall making that statement.

Appendix G

[77] Q. Are you denying making that statement?

A. No, I'm not denying it. I'm saying I do not recall making that statement.

Q. You told us that you didn't know where Mr. Ring was at the time of the actual assault because you couldn't see him?

A. That's correct.

Q. You had a general idea though, correct?

A. For the purposes of the planning stages, yes.

Q. What angle was Mr. Ring, if at all?

A. I don't know.

Q. Okay.

A. Are you asking for the physical assault or planning stages?

Q. Yes, sir, physical assault.

A. I do not know.

Q. When you approached the van, you said you're at a forty-five degree angle from the van, correct?

A. Yes, sir.

Q. That Mr. Magoch opens his van about six to eight inches, the door, correct?

A. Yes, sir.

Q. And he turns sideways?

[78] A. Yes, sir.

Q. Correct?

A. Yes, sir.

Q. Now, when he is turned sideways, is he physically inside the van, or is he outside the van?

A. Part of his body is inside, part of his body is outside.

Q. What part is outside?

A. His head.

Q. So he's what, still sitting in his seat?

A. Yes, sir.

Q. Are his feet resting on the little van ledge there?

A. Yes, sir.

Q. And he's smoking a cigarette?

A. Yes, sir.

Q. And the door's open about six to eight inches?

A. Yes, sir.

Q. So that would place Mr. Ring somewhere off to the side of the van because this door is angled, right, six to eight inches?

A. Possibly.

Q. Okay. You said that you heard the shot break, or you heard the shot, and then you moved on the [79] van?

A. Correct.

Q. And you previously told us that when you approached the van, you pushed Mr. Magoch over, that nobody else is present at that point in time; correct?

A. During the assault?

Q. Yes, sir.

A. Correct.

Q. Nobody is coming out of the Dillard's, correct?

A. Not to my knowledge, no.

Q. Okay. And you simply push him over, get in the van and drive it away right then; correct?

A. Correct.

Appendix G

Q. You don't see anybody come out or exit before you leave; correct?

A. I don't recall seeing anybody.

Q. Okay. And you're dressed in your light blue windbreaker with your sunglasses on; correct?

A. Correct.

Q. You're not dressed in any type of an outfit with a badge or attempting to look like a driver; correct?

A. Correct.

Q. From there you drive to the church lot; [80] correct?

A. Yes, sir.

Q. Okay. You're alone in the van, correct, with the exception of Mr. Magoch?

A. Yes, sir.

Q. Okay. Nobody is sitting up on another seat in that van; correct?

A. Correct.

Q. Because there isn't another seat in that van; correct?

A. Correct.

Appendix G

Q. Okay. There was a milk crate in the front of that van; correct?

A. I don't recall.

Q. Okay. Your testimony is that, is that you are following Mr. Ring?

A. No.

Q. Okay. Mr. Ring is directing you somehow as to where to drive?

A. Correct.

Q. Okay. You're in the lead, and he's behind you in his red Toyota pickup truck; correct?

A. Correct.

Q. Mr. Ferguson is nowhere to be seen?

A. Correct.

[81] Q. Okay. He later comes upon you as you're finishing up offloading the money; correct?

A. Correct.

Q. Okay. From there you go to someplace out by Yarnell in the desert?

A. Correct.

Q. Okay. You told us that you were separating checks and cash; correct?

A. Yes, sir.

Q. Okay. What about coin?

A. Yes, sir, I believe we were separating some coin, yes.

Q. You told us about that you took the gun from Mr. Magoch, which you gave to Mr. Ring; correct?

A. Correct.

Q. Mr. Ring later throws it in some pond; correct?

A. Correct.

Q. From there you drive to Prescott, then back down to a Burger King, I-17 and into the Valley, correct?

A. Correct.

Q. You told us Mr. Ring is an excellent shot; fair statement?

A. Yes.

[82] Q. And that you went to a motel where you stayed the night, and Mr. Ring went home?

A. Yes, sir.

Q. You then you told us about the mood when everybody was counting the money; correct?

A. Yes, sir.

Q. You said everybody was pretty happy except for you, you were distraught?

A. Correct.

Q. You were the only one that was distraught?

A. I don't know.

Q. Okay. Were you on drugs at the time?

A. No, I was not.

Q. You didn't have a meth habit at this point in time?

A. No, I did not.

Q. Now, the scenario that we just went through which Mr. Fenzel went through with you earlier is basically the same scenario that you told Detective Clayton and Bruce Lowe; correct?

A. Correct.

Q. Okay.

We talked a little bit about my visit to you in April of ninety-six at the Madison Street Jail moments ago.

[83] A. Yes, sir.

Q. Do you remember my visit?

A. Yes, sir.

Q. Okay. Do you remember when I had some discussions with you about your statement given to Bruce Lowe and Tom Clayton back in February when you were arrested?

A. Yes, sir.

Q. Okay. Do you remember telling me at the time of that statement that you were under the influence of drugs and that you had been on a binge for three or four days?

A. Yes, sir.

Q. Was that true?

A. Yes, sir.

Q. Okay.

Do you remember telling me that because of the amount of drugs you had done, that you simply didn't remember a lot about what occurred on the specific day of the robbery?

A. I don't recall that statement.

Q. Okay. Do you deny that statement?

A. I don't recall that statement.

Q. Okay.

Do you remember telling me during our April [84] fourth of ninety-six interview that I tape recorded of you that most of the information that you gave to Detectives Clayton and Lowe was fed to you by those two officers? Do you remember saying that?

A. I don't recall.

MR. CLARK: May I approach the witness, Judge?

THE COURT: Yes.

BY MR. CLARK:

Q. I'm going to ask you to review a document and refresh your recollection.

For the record, it's page five of the interview of April fourth.

A. All right.

Q. Now, I've just showed you a transcript of our interview that occurred in the Madison Street Jail, and my question is, do you remember telling me that Detectives Clayton and Lowe were feeding facts of the case to you? Does this refresh your recollection with respect to that?

THE COURT: Did you answer that question?

THE WITNESS: No, sir, I did not.

MR. CLARK: I think he did. I asked him if he remembered.

[85] THE COURT: I didn't hear it. Is what I'm saying. I didn't hear him answer.

MR. CLARK: I'm sorry.

THE WITNESS: Would you please repeat the question?

BY MR. CLARK:

Q. Does this transcript refresh your recollection with respect to my earlier question about them feeding you facts?

A. Assuming that is a transcript of our conversation.

Q. Yes, sir.

A. Possibly.

Q. Do you have reason to doubt that this is the actual transcript of our conversation?

A. I have — I don't know. I don't have the tape to verify with the transcript itself.

Q. Okay. Having looked at this transcript, and aside from those feelings, are you telling me that you didn't tell me that Clayton and Lowe fed you those facts?

A. No, I'm not saying that.

Q. Okay.

Do you remember telling me that the scenario that you told Detective Clayton and Detective [86] Lowe, which is the same scenario that you've told us here today, that none of it was the truth?

A. Do I recall telling you that?

Q. Yes, sir.

A. Yes, I do recall that.

Q. Okay. Do you remember me asking the following question: Did the fact that Mr. Ring planned this robbery, was that something that was suggested to you or fed to you by either Bruce Lowe or Tom Clayton? Your answer: It was fed to me by Tom Clayton. Do you remember that question and that answer?

A. No, I do not.

Q. Are you denying them?

A. No, I am not.

Q. Okay.

A. I do not recall them.

Q. Do you remember the following question and your answer. This is a question by me, and it also occurs on April fourth, ninety-six: Your statements with respect to Tim Ring planning this you indicated were not true? Your answer: True. Your statement with respect to Tim Ring being present was not true? Your answer: Correct. Do you remember those questions and those answers?

A. Vaguely, yes, sir.

[87] Q. Okay. Are you telling me that you were being less than truthful with me back in April of ninety-six when I came up to interview you?

A. I'm telling you I was lying to you.

Q. Okay. At the point in time when I'm doing this April interview, you're certainly not under the influence of drugs, are you?

A. No, I'm not.

Q. At the time that you entered your plea and promised to be truthful, you're not under the influence of any types of drugs, are you?

A. No, I'm not.

Q. Then what is it about your statement today as opposed to your statement in April, ninety-six, to me, that makes either one of them believable?

A. The statement I gave to you in April was the fact of Mr. Ring's death threats and a concern for my family. I felt that if I made those statements that he would leave myself and my family alone.

Q. Okay. Let's talk about that for a minute. Mr. Ring's in the Madison Street Jail with you at the time; correct?

A. Correct.

Q. And you've told us that these threats, these alleged death threats were communicated to you by [88] jail personnel. They were relayed by someone else?

A. Correct.

Q. Okay. Who was that?

A. Jail intelligence.

Q. Guards?

A. Jail intelligence.

Q. Well, is that guards?

A. I don't know what their classification is.

Q. Detention officers?

A. I don't know what their classification is, sir.

Q. They're not inmates, are they?

A. No, sir, they're not.

Q. You're telling us that someone who works for the State came and said, hey, Tim Ring is making death threats at you so you better exonerate him; is that what you're saying?

A. No, sir, I'm not.

Q. What are you saying?

A. I'm saying that Mr. Ring made death threats against me, that's all I'm saying.

Q. And these death threats were supposedly related to you by jail personnel, somebody employed by the Madison Street Jail?

A. Correct.

[89] Q. And as a result of those death threats, you take it upon yourself to exonerate Mr. Ring and Mr. Ferguson, correct?

A. Yes, sir.

Q. Okay. Now, was this before or after you had entered your plea, or been allowed to withdraw from your plea?

A. I had already withdrawn from my plea at that point in time. I believe I had already withdrawn from my plea at that time. I'm not sure — I don't recall what the date was

when I withdraw from my plea. I believe it was a prior — I believe the date I withdrew from my plea was prior to our conversation.

Q. The person who communicated these alleged threats to you, was that a uniformed officer out of Madison Street Jail?

A. On one occasion, there was a sergeant and lieutenant who had told me about the death threats. On one occasion, there was a sergeant from jail intelligence that told me about the death threats.

Q. Okay. Both of these are uniformed individuals at Madison Street?

A. Two of them are uniform, one is not. She wears civilian clothing.

Q. Okay. And these officers came to you on [90] both of these occasions before or after you were allowed to withdraw from the plea?

A. I believe it was before I withdrew from my plea. Because that was the sole reason for me withdrawing from my plea was because of the death threats.

Q. Okay. Do you remember telling me back in April of ninety-six that your motivation for coming forth and telling the truth, your sole motivation was — strike that. Do you remember telling me back in April of ninety-six that your motivation at the time of your interview with Detective Clayton and Bruce Lowe where you incriminate Mr. Ring was to get revenge?

A. And it still is.

Q. Okay. And you told me back in April that you wanted to get revenge against Mr. Ring because, number one, you now had the opportunity to, and because of what he had done to you in ruining your relationship with your wife?

A. On top of that. And other death threats that he made against me.

Q. Okay.

THE COURT: Is this a good spot to break for lunch?

[91] MR. CLARK: Yes, Judge.

THE COURT: Let's break until one fifteen.

(Noon recess taken.)

THE COURT: Before we continue, here is Exhibit One, Greg. It is the DR. Have you looked at it?

MR. CLARK: Yes. I was given a copy earlier.

THE COURT: Are you saying that you've not seen this?

MR. CLARK: No. I have seen that, Judge.

THE COURT: Okay. So you had this before trial?

MR. CLARK: Yes.

THE COURT: Okay. All right. Go ahead.

BY MR. CLARK:

Q. Mr. Greenham, when we broke, we were talking a little bit about your reasons for testifying with respect to Mr. Ring, okay?

A. Correct.

Q. We were talking about your motives, whether you were doing it out of spite, out of vengeance, whatever, correct?

A. Pay back, correct.

Q. That's an interesting term, because when you walked into this courtroom this afternoon before we began, you voiced your concerns to Mr. Ring and said, [92] hey, this is pay back time?

A. That's right, I did.

Q. You're paying him back. You're acting out of vengeance?

A. That's right. I am. I would testify against Mr. Ring without a plea agreement and take the death penalty. I have no problem with it.

Q. Why did you enter a plea?

A. I was offered a plea, I took it.

Q. Okay. Let's talk a little bit about these alleged threats. You say that you first learned about these threats that were attributed from coming from Mr. Ring from a sergeant, among one other, a sergeant first; right?

A. A sergeant and lieutenant, yes, sir.

Q. What exactly did they say to you?

A. The lieutenant said that we had received information about Mr. Ring concerning the fact that he wanted to kill you, or the fact that there was a death threat against you, and that it came from Mr. Ring.

Q. Okay. So they're saying that — well, number one, they weren't passing you any type of a note or a kite or a message from Mr. Ring; correct?

A. Correct.

Q. Okay. They weren't giving you their [93] advice, correct, or their opinion?

A. Correct.

Q. They're saying, hey, we heard something through the grapevine, and Ring's out to get you?

A. Something like that, correct.

Q. Okay. Now, did they tell you from where they got their information, where it came from?

A. At one point in time, I don't remember if it was the second, if it was the lieutenant told me first, or the civilian sergeant, but one of them had told me that they had found a note in Mr. Ring's cell concerning a death threat. I don't recall when it was. It was the first time they told me or the second, I'm not sure.

Q. Okay. Did you ever get to see that note?

A. No, I have not.

Q. So you don't even know if it was addressed to you or it was about you or it was their opinion?

A. I saw the DR on it, that's all I've seen.

Q. Okay. A DR written by whom?

A. I believe it came from Glendale Police Department. I don't know who the writer of the DR was.

Q. Okay. You said that one of the people who gave you some information with respect to this threat was from a woman who's employed in the jail [94] intelligence. Was that the lieutenant or the sergeant?

A. That would be the sergeant, sir.

Q. Okay. Now, what exactly did she tell you?

A. She basically related the same information, that we had received information that Mr. Ring was coming after you. That there were death threats against you.

Q. That's all she told you, she didn't tell you from where it came?

A. No, she did not.

Q. She didn't say, hey, we searched his cell and found another note?

A. No, she did not.

Q. She didn't hand you a note directly to you?

A. No, she did not.

Q. She just said, hey, we have some information?

A. Correct.

Q. You don't know if it came from Ring, you don't know if it came from somebody else; correct?

A. Correct.

Q. Now, let's talk a little bit about an area that we previously spoke about is the shot. You say that you're in a position to hear the shot break, do you remember that?

[95] A. Yes, I do.

Q. You told us that you were standing outside of your vehicle, which is a Chevrolet pickup truck; correct?

A. Correct.

Q. You are located at a forty-five degree angle from the van that's parked in front of Dillard's, correct?

A. Correct?

Q. Approximately how far away are you?

A. Maybe thirty yards.

Q. Okay. And from this vantage point, you have — you told us that you don't know where Mr. Ring is?

A. That's correct.

Q. Okay. You're not focusing on him, certainly?

A. Correct.

Q. You're focusing entirely on the van, correct?

A. Correct.

Q. Do you hear this shot break out?

A. Correct.

Q. And you immediately move to the side of the van and the door?

[96] A. Correct.

Q. Okay. Where was Mr. Ferguson?

A. He was in my pickup truck.

Q. Where was — he was in that forty-five degree angle with you?

A. That's correct.

Q. Now, you've told us that this door — you've somehow figured out that this driver, Mr. Magoch, was a smoker, correct?

A. Correct.

Q. That the door was open approximately six to eight inches; correct?

A. About that, correct.

Q. And that he is sitting — is he sitting crosswise on his driver's seat when he's smoking with the door open, or is he facing straight ahead, or do you remember?

A. He's facing crosswise, so he's looking directly at me.

Q. His knees are pointing where?

A. Towards me.

Q. Towards you. So he is, just for purposes of illustration, sitting like this with the door open; correct?

A. That's correct.

[97] Q. When the shot breaks out, and you move?

A. That's correct.

Q. You're sure that's how it happened?

A. Yes, I am.

Q. Do you remember having a conversation with me wherein back in April of ninety-six that you were coming clean with respect to your prior statements simply because they were not correct?

A. I remember that comment, yes, I do.

Q. But that was not true?

A. Correct.

Q. Okay. You certainly — well, you told us that you were operating under this alleged threat from Mr. Ring; correct?

A. The threats, yes.

Q. That you were coming clean not because you wanted to but because you were afraid of Mr. Ring?

A. For my life and the sake of my family, yes.

Q. Okay. And you're coming forth at this point in time not because you're afraid of Mr. Ring but because you're operating under the benefit of a plea agreement; correct?

A. Not totally, no.

Q. Well, besides your opportunity to get back at Mr. Ring and pay him back; correct?

[98] A. That's correct.

Q. You remember telling me back in April of ninety-six that you had no idea how this event actually happened?

A. I don't recall that statement, no.

MR. CLARK: May I approach, Judge?

THE COURT: Yes.

BY MR. CLARK:

Q. I've just shown you a transcript of our April of ninety-six conversation at the Madison Street Jail, and with respect to my last question, does that refresh your recollection what you told me back then?

A. Assuming that's our actual conversation, no, I don't recollect.

Q. That you have no idea of the following: You have no idea how this event actually happened, do you? Your answer: No, I do not?

A. That's correct.

Q. Do you have a recollection of the following, also from the same interview at Madison Street: Your rendition of how

this event transpired and how Mr. Magoch was killed was simply said to appease the police? Your answer: Correct. Do you remember that question and that answer?

[99] A. No, I do not.

Q. Are you denying that you said that?

A. No, I am not. I'm just saying I do not remember.

Q. Do you remember the following question and your answer: You have no knowledge of Mr. Ferguson and Mr. Ring being involved in this homicide; is that correct? Your answer: Correct.

A. That sounds familiar. But I can't say one hundred percent that was my statement.

Q. Okay. Well, you weren't under the influence of drugs back then, were you?

A. No, I was not.

Q. You certainly weren't operating under the umbrella of a favorable plea agreement, were you?

A. No, I was not.

Q. I wasn't in any way coercing you, was I?

A. No, you were not.

MR. CLARK: If I could have a moment, Judge, I will be done.

I have nothing additional, thank you, Judge.

THE COURT: Mr. Fenzel.

[100] **REDIRECT EXAMINATION**

BY MR. FENZEL:

Q. Mr. Greenham, we've today talked a little bit about it, Mr. Clark talked about the statements you gave to police. You gave a statement on the sixteenth of February of nineteen ninety-five. That was the date that you were arrested; is that correct?

A. Correct.

Q. Then you spoke to Mr. Clark sometime in April of nineteen ninety-six?

A. Correct.

Q. You gave other statements to the police, didn't you?

A. Yes, sir, I did.

Q. You gave a statement to the police on or about March first, nineteen ninety-five, did you not? Let me — the date that you went with the police to the lake and to Yarnell?

A. Yes, sir, I did.

Q. Assume for a moment that was March first, nineteen ninety-five?

A. If that was the date, yes, sir.

Q. Did you in fact give the police information and speak to the police on that date?

A. Yes, sir, I did.

[101] Q. There was an attorney there present with you?

A. Yes, sir.

Q. And that was Mr. Blischak?

A. Yes, sir.

Q. What, if anything, did you tell the police on those days about your involvement, Mr. Ring's involvement, and Mr. Ferguson's involvement, if any, in the Arrowhead robbery on the twenty-fourth — twenty-eighth of November, nineteen ninety-four?

A. I don't recall actual getting into discussion of the actual robbery itself. I recall discussing to Detective Clayton the fact where the gun was at.

Q. You actually showed him the lake?

A. Yes.

Q. Gave directions to the lake?

A. Yes.

Q. Actually gave directions to the field to Yarnell?

A. Yes.

Q. On the way to Yarnell?

A. Yes, sir. I believe those were the only conversations we talked about. What happened at the burn site and what happened at the pond.

[102] Q. You also spoke in an interview with Detective Clayton and myself, Mr. Blischak, and investigator Hanratty on or about September fifteen, nineteen ninety-five?

A. Correct.

Q. What, if anything, did you tell the detectives and myself on that date?

A. I gave the entire details of the full armored car robbery. Of how it happened, who was involved.

Q. And who did you say was involved?

A. Mr. Ring and Mr. Ferguson.

Q. You said no one else was involved; is that correct?

A. That's correct.

Q. You've given other statements in the months of August, nineteen ninety-seven, to various attorneys?

A. Yes.

Q. You were interviewed over at the Madison Street Jail by Mr. Foreman, Mr. Hart?

A. Yes, sir.

Q. And others?

A. Of nineteen ninety-seven?

Q. This year, couple of months ago?

A. Yes, sir. Yes, sir. They interviewed me, [103] yes.

Q. You spoke to Mr. Clark at the beginning of September, nineteen ninety-seven, also, in the jail?

A. I believe he was there. I don't recall him asking any questions.

Q. Do you remember Mr. Clark seeing you about a month or so ago in the jail, over in the old jail?

A. Oh, yes, okay. I recall now, yes, sir. All right.

Q. What did you tell him then?

A. Aspects of the case, armored car robbery.

Q. Have you ever gotten any kites from Mr. Ring?

A. Numerous.

Q. What's a kite?

A. It's a form of a letter, a note.

Q. And what if anything did those letters and notes from Mr. Ring want you to do?

MR. CLARK: Objection, Judge, lacks foundation as to when.

THE COURT: Sustained.

BY MR. FENZEL:

Q. When did you get the kites?

A. I believe it was — there was numerous kites [104] probably the month of the time that I took the second plea agreement, and I received one letter from Mr. Ring just after I was arrested. Just after we were arrested for this crime.

Q. What, if anything, did Mr. Ring want you to do?

MR. CLARK: Judge, I would object once again as to lack of foundation. How would he know they came from Ring?

THE COURT: Sustained.

BY MR. FENZEL:

Q. Did these letters come from Mr. Ring?

A. Yes, sir, they did.

Q. How did you know they came from Mr. Ring?

A. Mr. Ring gave them directly to me.

Q. What did Mr. Ring want you to do?

A. One of the letters, or a letter and a copy was an affidavit that he had typed up stating that he wanted me to sign the affidavit so he can give it to Mr. Clark, which was basically exonerating him from the robbery and implicating myself and Mr. Sanders.

Q. Did you sign that and date it?

A. No, sir, I did not.

Q. Why didn't you sign it?

[105] A. Because it wasn't a true statement. It was a fact, Mr. Ring just wanted to get off so he can get out.

Q. Mr. Clark asked you some questions about your motive for testifying today and mentioned pay back time?

A. That's correct.

Q. Is what you're saying now happened, or is there some other motive for your testifying today?

A. Other than the fact that he's threatened me on numerous other occasions, the fact he's held a gun to my head, threatened to blow my head off. The fact he's threatened to kill my family. He is wanting to kill my family. I say that's pay back enough.

Q. Is what you told the Judge with respect to what happened in the Wells Fargo robbery true or not?

A. That's a true fact.

MR. FENZEL: That's all. Thank you, Mr. Greenham.

THE COURT: All right.
Thank you, sir, you can stand down. Go ahead.

MR. FENZEL: Judge, can I just have a couple of seconds to make sure Doctor Keen is here?

[106] THE COURT: Yolie says he is.

MR. FENZEL: Can I just get him?

THE COURT: Yes.

MR. FENZEL: I'm sorry, Judge.

THE COURT: Do you need Mr. Greenham?

MR. FENZEL: No.

THE COURT: Come on up, Doctor Keen, and be sworn.

PHILIP KEEN,

a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FENZEL:

Q. Doctor Keen, you testified in the trial of Mr. Ring; is that correct?

A. Yes, sir, I did.

Q. And you testified basically from the reports of Doctor Bolduc who actually did the autopsy in this case?

A. That is also correct.

Q. Following the trial, did you do additional work on this case, or following your testimony, did you do additional work?

A. Yes, sir, I've looked at additional [107] photographs in conjunction with this case, and also reviewed the report again.

Q. And have you reviewed any medical slides or anything like that?

A. Yes, I have done that as well.

* * *

Appendix G

[128] WILLIAM MORRIS,

a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FENZEL:

Q. Will you please tell us your name?

A. William H. Morris, Junior.

Q. Mr. Morris, you work for the Arizona Department of Public Safety Crime Lab, do you not?

A. I do, sir.

Q. And you are one of the people that testified in the trial of Mr. Timothy Ring?

A. I was, yes.

Q. This past summer in June of nineteen ninety-seven, did you obtain a slide from the Maricopa County Medical Examiner's Office relating to Mr. John Magoch?

[129] A. A slide was brought to me by Detective Clayton, yes, sir.

Q. What were you asked to do with that particular slide from the Medical Examiner's Office?

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A. I was asked to look at a particle on it and determine whether it was gunpowder or not.

Q. How did you go about doing that?

A. I first looked at the slide using the low power stereo scopic microscope, and I located the particle, it was very small, so we then looked at it under a higher magnification microscope.

Q. And you have training and experience in doing this thing as far as identifying gunpowder on wounds and things like that?

A. Yes, sir.

Q. And were you able to determine whether or not in your opinion this was gunpowder?

MR. CLARK: I would ask for a little bit more foundation.

THE COURT: Sustained.

MR. FENZEL: All right. What training and experience do you have with respect to identifying particles of gunpowder?

A. As part of my training in firearm [130] examination, I was trained to identify gunpowder particles, to identify gunpowder residues microscopically and chemically. I attended a week long FBI course in gunpowder residue examination. I reload my ammunition. As part of my job, I supervise a criminalist who does explosive analysis. We frequently encounter gunpowder, bombs, things like that.

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Q. What experience do you have with granules or generally identifying granules of gunpowder?

A. I've looked at numerous items of clothing that had gunpowder residues on them, and have had to examine the basic types of gunpowder.

Q. Are you able to identify types of gunpowder from that type of examination?

A. I'm able to identify the general type by the shape. As far as identifying a particular brand of gunpowder, you can't do it just by a microscopic examination.

Q. Are you trained to actually identify different brands of gunpowder by a single grain?

A. I do that by assigning the case to Don Christian, who can do that. But he does it instrumentally.

Q. And how many cases have you had an occasion to try to identify whether or not a substance is gun [131] powder or not?

A. Numerous, sir. In excess of a hundred, I would say.

Q. How long have you been with the Department of Public Safety Crime Lab?

A. For twenty-five years, sir.

Appendix G

Q. And has your duty for that twenty-five years partly been involved in identifying whether or not a substance is gunpowder?

A. It's a regular part of every firearm examination we do. We look at the gunpowder residues in a gun barrel, and I do primarily firearm identifications.

Q. And how often have you done that over your twenty-five years with DPS?

A. I would imagine in excess of a thousand, maybe two thousand times, sir.

Q. And are you able to tell by looking at something through a microscope based on your training and experience whether or not something has the characteristics of being gunpowder?

A. Yes, sir.

Q. And did you do that in this case?

A. Yes, sir.

Q. And based on your training and experience, [132] what, if anything, were you able to tell about the item that you looked at in the microscope in this case?

* * *